

OGC 72-0799

9 June 1972

MEMORANDUM FOR: Executive Director-Comptroller

SUBJECT : Agency Regulation Under E.O. 11652

STAT 1. Herewith our rewrite of the proposed regulation under E.O. 11652, together with [] memorandum of explanation and comment. The rewrite corrects a number of errors in the draft of 26 May, which was the subject of the Deputies' meeting on 2 June. Also, we have made changes based on comments and suggestions at the Deputies' meeting and on written and oral suggestions received from you, the Deputies and Mr. Thuermer.

2. At the first meeting of the Interagency Classification Review Committee on 7 June, it was urged by all concerned that all departments should approve and issue their regulations just as soon as possible. It was mentioned that requests are being received from the press under the new Order. Also, I understand classified documents are being received by CIA from other departments which are being marked under E.O. 11652 procedures. It was also agreed at the meeting that ICRC approval of each agency's regulation, which is required by the Executive Order, will be accomplished by giving each member of the Committee five days to voice opposition. Failing any objection, the regulation would stand approved by the Committee. AEC and Defense, in fact, have issued their regulations and are operating under them, but they have indicated their intentions to revise their regulations if ICRC approval action so requires.

3. In view of the foregoing, I recommend that you approve the attached regulation by close of business Monday, 12 June, unless a Deputy recommends to the contrary or proposes changes. I also recommend that no changes be made unless there are actual errors. Note in this regard the inclusion of Section K of PART VI, at page 35, which advises all components to recommend changes at any time to improve the regulation.

4. The provision for the effective date of the regulation has been left blank. In order to give a few days for publication, distribution, and at least some digestion, I would propose that a date ten (10) days subsequent to the date of your approval be inserted.

5. To permit the Deputies to comment to you on this memorandum and attachments, we have distributed to each Deputy and to Messrs. Huizenga, Broe, Osborn, and Thuermer one or more copies of this submission.

6. Your signature below will approve the regulation in accordance with the foregoing. It will also rescind [] and [] which become obsolete. Upon your approval, I will forward our regulation to the Interagency Classification Review Committee for its approval. We will also remove the marking "Draft - 8 June 1972" in the upper right-hand corner, insert the effective date, and furnish it to Mr. Coffey for printing and distribution.

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LAWRENCE R. HOUSTON
General Counsel

By [Signature]

Attachments

Approved

Executive Director

Date

DISTRIBUTION SHEET - OGC 72-0799

Memorandum for Executive Director-Comptroller from General Counsel
"Agency Regulation Under E. O. 11652"

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1-Asst to DCI-Mr. Thuermer

2-D/Security

DATE: 6.12.72

TO: Messrs. ~~Proctor~~ and ~~Walsh~~

FROM:

SUBJECT: New Headquarters Regulation on
Classification/Declassification

REMARKS:

Attached is the Headquarters Regulation proposed by Houston and company. In going over it there seemed to be no provision for handling an item which contained more than one classification such as an OER memorandum or a CIB piece. Such provision is, however, in the NSC Directive and I talked to John Warner who assures me this subject is covered on page 7 in paragraph 3.

OGC is most anxious to get this off the pad without further changes. Both Harry and I have gone over it in some detail and feel it is the best we can hope for under the circumstances, and we recommend you agree.

Pls file Declassification

ACTION

SENDER WILL CHECK CLASSIFICATION ON TOP AND BOTTOM			
Approved For Release 2005/08/03 : CIA-RDP80B01495R000200100023-7		CONFIDENTIAL	SECRET
OFFICIAL ROUTING SLIP			
TO	NAME AND ADDRESS	DATE	INITIALS
1	DDI 7E44		<i>Emp</i>
2	<i>ADDI</i>		
3			
4			
5			
6			
<input type="checkbox"/>	ACTION	<input type="checkbox"/> DIRECT REPLY	<input type="checkbox"/> PREPARE REPLY
<input type="checkbox"/>	APPROVAL	<input type="checkbox"/> DISPATCH	<input type="checkbox"/> RECOMMENDATION
<input type="checkbox"/>	COMMENT	<input type="checkbox"/> FILE	<input type="checkbox"/> RETURN
<input type="checkbox"/>	CONCURRENCE	<input type="checkbox"/> INFORMATION	<input type="checkbox"/> SIGNATURE
Remarks: <div style="font-size: 1.2em; margin-top: 20px;"> A suggested addition to be possibly inserted at the end of TP 3 on pg 7. Otherwise ok </div>			
FOLD HERE TO RETURN TO SENDER			
FROM: NAME, ADDRESS AND PHONE NO.			DATE
General Counsel			6/9/72
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9 June 1972

TO ALL REVIEWERS OF 8 JUNE DRAFT OF CIA REGULATION
UNDER EXECUTIVE ORDER 11652

1. The attached is our rewrite of the 26 May draft which was distributed earlier and discussed at the Deputies' meeting on 2 June. The rewrite accommodates nearly all the comments made at that meeting and the written and oral comments and suggestions we have received from the Directorates and Mr. Thuermer.

2. Your attention is invited to several points.

a. We have revised the language of PART I, Section A to avoid stating that the authority of Top Secret classifiers to exempt may not be delegated. Our thought here is that the Executive Order and the NSC Directive, as a matter of our legal interpretation, permit delegation. (Further, by one means or another such authority will have to be exercised by more people than Top Secret classifiers.) The NSC representative on the Interagency Classification Review Committee, who in large part prepared the NSC Directive and finalized the Executive Order, on the other hand, does not agree that such authority may be delegated. The Department of Justice regulation, it may be noted, does not delegate this authority and is in language which would seem to suggest that it may not be delegated. Our regulation, accordingly, does not delegate the authority, but avoids stating that it may not be delegated.

b. The DDP noted that Sections A and B of PART II seem to contradict each other in that the former stated that only certain named officials could classify, but the latter, at least inferentially, instructed any employee who originates a document to classify. Section B is revised to meet this point.

c. Minor revisions of PART B (p. 1) meet a DDI suggestion.

d. In PART II, minor revisions of Sections B. 3 and 6 (pp. 7, 8), and C. 3 (p. 9) meet DDP suggestions.

- e. Section C. 4 of PART II was not in the 26 May draft.
- f. Minor revision of paragraph 3 on page 9 is a DDI suggestion.
- g. The fill-in line on the second stamp at subparagraph (b) on page 10 had been omitted in the earlier draft.
- h. In PART III, "operational relationships" was added to subparagraph (b) on page 15 at the suggestion of the DDP.
- i. Subparagraph (c) on page 15 was not in the earlier draft.
- j. In the earlier draft there was considerable duplication in paragraph 3 of Section A of PART III (p. 15) and the Annex. We have made deletions from paragraph 3 and certain modifications in the Annex. It is necessary that the substance involved be in the Annex, which is to be published in the Federal Register, since the NSC Directive requires it.
- k. At page 18 in C.1, is our implementation of the provision in the NSC Directive that the burden of proof is on the Agency when the Agency declines to take certain declassification actions. I think this provision and concept in the NSC Directive essentially is rather silly, but White House press comments, including at least one by the President, have made much of the fact that the burden of proof to continue to classify documents is now on the agencies.
- l. At Mr. Colby's suggestion, the order of presentation at PART IV has been reversed; that is, need-to-know access is treated first, access by historical researchers last. Also, I have deleted reference to Congressional access. The Executive Order does not require its inclusion. Also, it is covered by Section A of PART IV and STAT continues to be applicable.
- m. There are no changes in PART V.
- n. The new draft continues to confer authority on the CIA Information Review Committee at two points: at Section D on page 29, and in the Annex to the regulation. Again the purpose here is to make available to the public by the publication of the Annex in the Federal

Register only those aspects of the Interagency Classification Review Committee's functions which involve the interests of members of the public. The regulation itself being unclassified will be available to the public, but only the Annex confers rights.

o. The data index system at page 30 is confined to essentially what the Central Reference Service now does or is able to do, as I understand it. If we want to enlarge the index system or create other ones, we of course may do so but are not required to do so by the regulation.

p. The provisions for listing authorized classifiers at Section F on page 32 reflect the comments at the Deputies' meeting on 2 June and Mr. Houston's report to the Interagency Classification Review Committee on 7 June. I have agreed with Mr. Wiltse the concept but not the language of Section F.2 on page 33.

q. The requirement at Section G for Agency components to establish procedures to identify the classifier of each document has not been changed. It may be desirable to establish a uniform procedure throughout the Agency but until such an Agency procedure can be developed, procedures by each component seem the only practicable course.

r. Sections H and I had not been included in the earlier draft, and are required by the Executive Order or the NSC Directive.

s. Section K at page 35 has been added, partly as window dressing for the benefit of non-Agency readers of our regulation. But it is also to suggest that the regulation is likely to involve procedures or requirements which are unduly difficult and which could be deleted or modified, while continuing to comply with the Executive Order.

3. In my absence during the next two weeks, Mr. John Warner will be glad to field all questions and do any follow-up.



Associate General Counsel

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